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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
)

Policy and Rules Concerning the)
Interstate, Interexchange Marketplace)
)

Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)
)

CC Docket No. 96-61

**JOINT OPPOSITION TO MOTION FOR PARTIAL STAY OR REQUEST
FOR EXTENSION**

The Office of the Governor of Guam ("Governor") and the Guam Telephone Authority ("GTA") hereby jointly oppose the Motion for Partial Stay or Request for Extension filed on June 17, 1997, by the GTE Service Corporation ("GTE") and the Micronesian Telecommunications Corporation ("MTC"), two subsidiaries of GTE Corporation (Collectively "GTE").

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BACKGROUND

On August 7, 1996 the Federal Communications Commission ("FCC" or "Commission") released its Report and Order in this Docket.¹ The Commission adopted a rule implementing Section 254(g) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Act"). Section 254(g) requires that

a provider of interstate interexchange services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.²

In its Rate Integration Order, the Commission specifically found that providers of interexchange services to Guam, the Commonwealth of the Northern Mariana Islands ("CNMI") and American Samoa must provide those services on an integrated basis with services they provide to other states and ordered carriers to establish rates for Guam and the CNMI consistent with the rate methodologies employed for services to other states no later than August 1, 1997.³ In addition, the Commission determined that GTE, for the purposes of Section 254(g), constitutes a "provider" of interexchange services and that it must integrate rates across affiliates.⁴

¹ Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, 11 FCC Rcd 9564 (1996) ("Rate Integration Order").

² 47 U.S.C. § 254(g). The Act defines "State" to include territories, such as Guam.

³ Rate Integration Order at 9596-99 (¶¶ 66-73).

⁴ Id. at 9598 (¶¶ 69).

On September 16, 1996, GTE filed a Petition for Reconsideration and Clarification ("Petition") asking the Commission to reconsider its determination that a "provider" includes parent companies that, through affiliates, provide service in more than one state.⁵ The Governor of Guam and GTA filed a Joint Opposition opposing GTE's Petition on October 21, 1996.

GTE now requests that the Commission stay the enforcement of Paragraph 69 of the Rate Integration Order or extend the deadline for GTE-affiliated carriers to file their tariff revisions. The Governor of Guam and GTA oppose this request.

Several GTE subsidiaries provide interexchange service to Guam and the CNMI. These are: MTC, GTE Hawaiian Telephone Company Inc. and GTE Pacifica. In addition, GTE is the sole provider of facilities between Guam and the CNMI, including the newly constructed fiber optic cable and the microwave system.

ARGUMENT

GTE has failed to satisfy the four factors considered in granting a stay (1) the likelihood that the party seeking the stay will prevail on the merits; (2) the likelihood of irreparable injury to the party seeking the stay absent such relief; (3) the absence of harm to others if a stay is granted; and (4) the public interest in granting a stay.⁶

⁵ Rate Integration Order at ¶ 9598.

⁶ See Wisconsin Gas Co. v. FERC, 758 F.2d 669, 673-74 (D.C. Cir. 1985); Virginia Petroleum Jobbers Ass'n. v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958).

A. GTE Has Not Demonstrated That It Is Likely To Prevail On the Merits

GTE argues that the Commission is not authorized to require across-affiliate integration because Section 254(g) is clear and does not require interpretation and because each GTE affiliate operates as a separate operating carrier.⁷ GTE also argues that Congress intended the Commission to incorporate only its existing rate integration policies, which do not require across-affiliate integration.⁸

The Governor and GTA believe that the Commission does have the authority to interpret the term "provider" to mean a parent company with affiliates providing interexchange services, for the purposes of Section 254(g). It is apparent that Congress intended national rate averaging. It is also apparent that this intent could be subverted by the creation of a network of affiliates and/or subsidiaries, each one of whom could provide service only in a limited area. To avoid subverting Congressional will, and to achieve the purposes of Section 254(g), the Commission has the authority to interpret the term "provider". Moreover, there is no evidence that Congress intended to limit rate integration to existing FCC policy. To the contrary, it is evident on the face of the statute that Congress intended that the Commission adopt national rate averaging to protect subscribers in rural and high cost areas.

⁷ Motion at 9-13.

⁸ Id. at 14-16.

B. GTE Affiliate Carriers Will Not Be Irreparably Harmed If The Commission Refuses To Grant A Stay Or Extension

GTE complains that MTC and other GTE affiliates will suffer irreparable harm if the Commission's requirement of rate integration across affiliates is allowed to stand because the affiliates will be required to charge non-compensatory rates.⁹ However, even if it were possible to support a claim that monetary harm is irreparable, GTE has failed to show that it would be required to offer service at non-compensatory rates. Accordingly, GTE has not met the burden of demonstrating irreparable harm.

C. Others Will Be Harmed If The Commission Grants The Requested Stay Or Extension

GTE fails to take into account the harm to customers on Guam if rate integration is delayed both in terms of the payment of higher rates and the chilling effect such rates will have on the economy in Guam. Even if it could be argued that rate integration between the Mainland and Guam would not be affected, it is certainly true that grant of a stay would likely result in rates between Guam and the CNMI being at non-integrated levels.

⁹ Motion at 17.

D. The Public Interest Weighs In Favor Of Denying GTE's Motion

The Commission should not set a precedent by allowing carriers to avoid rate integration by establishing subsidiaries to serve high cost areas. GTE's lower rates should result in downward rate pressure and competition for services in Guam. Nor can GTE and its subsidiaries complain about added regulatory burden since it will merely be required to comply with the same tariff filing requirements as all other carriers serving Guam.

CONCLUSION

For the reasons stated above, the Governor of Guam and GTA oppose GTE's and MTC's Motion for Partial Stay or Request for Extension.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Gail M. Mullen, do hereby certify that a copy of the foregoing Joint Opposition of the Guam Telephone Authority, was sent by first class United States mail, postage prepaid, or by hand delivery or facsimile where indicated by an asterisk (*), this 27th day of June, 1997 to the following:

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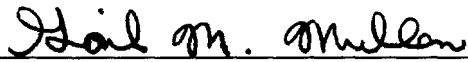
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